

PROGRESS REPORT NO. 13

MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN

June 28, 2005

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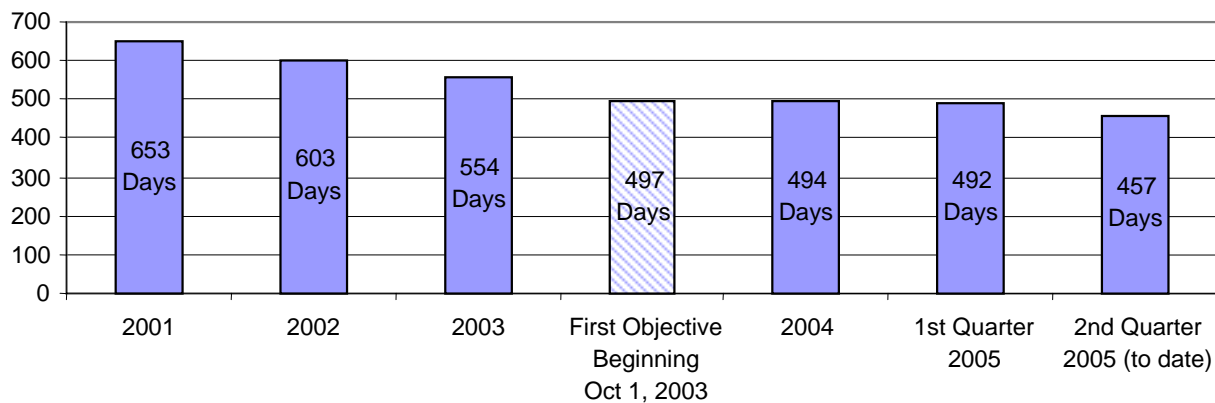
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I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has made important progress toward achieving that goal and has issued twelve Progress Reports documenting that progress. This Progress Report No. 13 sets out data covering the second quarter of 2005 to date, in which the Court made major reductions in the time it takes to decide a case on appeal. However, the budget situation for Fiscal Year 2006 threatens to reduce substantially, if not to eliminate, the Court's ability to reach its long-range goal.

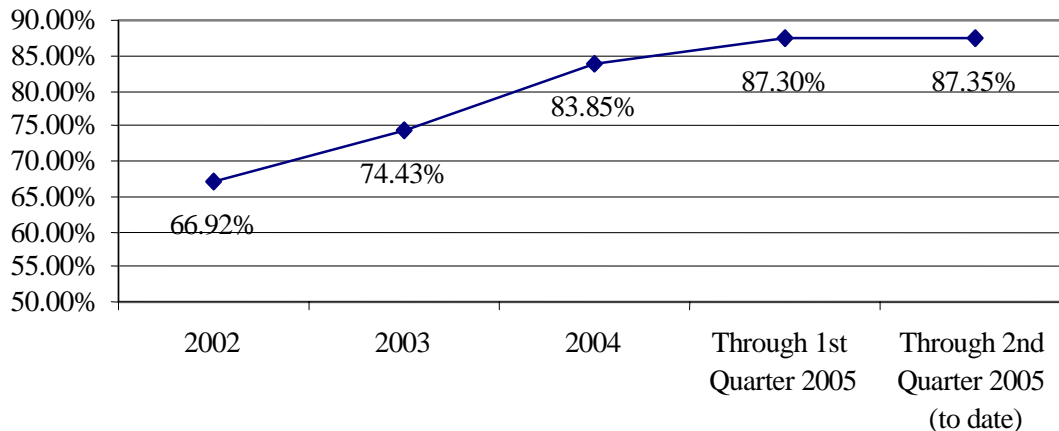
As shown below, during the second quarter of 2005 to date, the Court made dramatic reductions in the average overall time in processing an opinion case. Specifically, the Court reduced this average overall time from 492 days in the first quarter to 457 days in the second quarter to date, a reduction of 35 days:

Average Overall Time In Processing



Relating this achievement to the Court's base year of 2001, in the second quarter of 2005 to date, it took 196 fewer days on average to move an opinion case through the Court than it did in the base year. Thus, the Court has rapidly accelerated the progress toward delay reduction that it achieved in 2002, 2003, and 2004. Indeed, the Court has cut the average time it takes to decide an opinion case by over 30%. In the process, the Court has radically increased the percentage of cases it decided within 18 months of filing:

Percentage Of Cases 18 Months Old Or Less At Disposition



This remarkable progress now stands in jeopardy. As is well known, the State of Michigan has faced daunting challenges with respect to its budget situation over the last few fiscal years. Although the budget for the Judiciary is relatively small compared to the overall state budget—while the Executive branch and the Legislature routinely deal with billions of dollars, the Court of Appeals’ expenditures for FY 2004 were \$17,100,800—the Court has been part of the solution to these challenges. Indeed, the Court’s operational expenditures have increased from FY 1999 to FY 2004 by only 2.08% while the rate of inflation has increased by 14.89%.

During that same time period the Court’s expenditures per disposition—in industrial terms, its cost per unit produced—have actually declined when measured in 1999 dollars and its dispositions per full time equivalent (including Judges)—again in industrial terms, its productivity per worker—have increased. While the Court’s overall impact on the state budget is small, adjustments to its budget are of great importance as they have a very direct impact on the Court’s operations and its continued ability to increase productivity and reduce delay.

Against this background, it is certainly not an exaggeration to state that the FY 2006 budget request for the Judiciary that Chief Justice Taylor submitted to the Legislature in March was a lean one. Again focusing on the Court of Appeals, the gross appropriation that Chief Justice Taylor requested was \$19,047,700. This was essentially a “standstill” budget; indeed, it fell somewhat short of covering the Court’s projected increases in insurance, retirement, and other costs.

However, the gross appropriation for FY 2006 contained in the House Omnibus Appropriation bill was \$18,537,100 while the gross appropriation contained in the Senate Bill was \$18,225,100. Thus, the Court of Appeals faces reductions in Chief Justice Taylor’s budget request for FY 2006 of \$510,600 if the House version of the FY 2006 budget is adopted and \$822,600 if the Senate version is adopted.

These reductions in the Court’s proposed FY 2006 budget will severely compromise, if not totally stymie, the Court of Appeals’ delay reduction effort. Approximately 90% of the Court’s costs relate to personnel. These reductions, if implemented in their current form, will mean that the Court will be unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion . . . and these are the very staffing levels that the

Legislature and the Executive Branch previously allowed the Court to increase, through increases in its statutorily-set fees, in order to meet its delay reduction goal.

The litigants and the attorneys who appear before the Court—indeed, all of the people of Michigan—deserve nothing less than the full commitment of resources necessary to reach its delay reduction goal. Delay on appeal is pernicious and indefensible. No one benefits from delay; not the child who waits for a custody decision nor the business that places its expansion on hold; not the criminal defendant who protests his innocence but sits in prison while his appeal is pending nor the crime victim who awaits the outcome of that same appeal.

The Judges of the Court of Appeals have made themselves publicly accountable for the achievement of the Court's delay reduction goal. The Supreme Court, the Department of Management and Budget, the Governor, and the Legislature have all recognized how important that goal is. To lose the momentum generated by three and a half years of careful planning and hard work would be more than a setback, it would be tantamount to a defeat for every person who has contributed to our delay reduction effort.

II. OVERVIEW

A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases, 3,100 by opinion and the rest by order. On average, the Court disposed of these opinion cases in 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued twelve progress reports detailing its progress on this plan. This thirteenth progress report covers the second quarter of calendar year 2005 to date. All of the progress reports are available on the Court's website at: <http://courtofappeals.mijud.net/resources/drwg.htm>.

B. Goals and Objectives

1. *Long-Range Goal*

The Court's delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal is to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

2. *First Short-Term Objective*

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days to approximately 497 days. To achieve this reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, primarily by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003. The Court has achieved this short-term objective.

3. *Second Short-Term Objective*

Reducing the overall average processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. To achieve that reduction, the Court must eliminate or substantially reduce the time that opinion cases wait in Warehouse. The Court has not yet achieved this objective.

III. RESULTS AS COMPARED TO FIRST OBJECTIVE

A. Processing Times of Opinion Cases

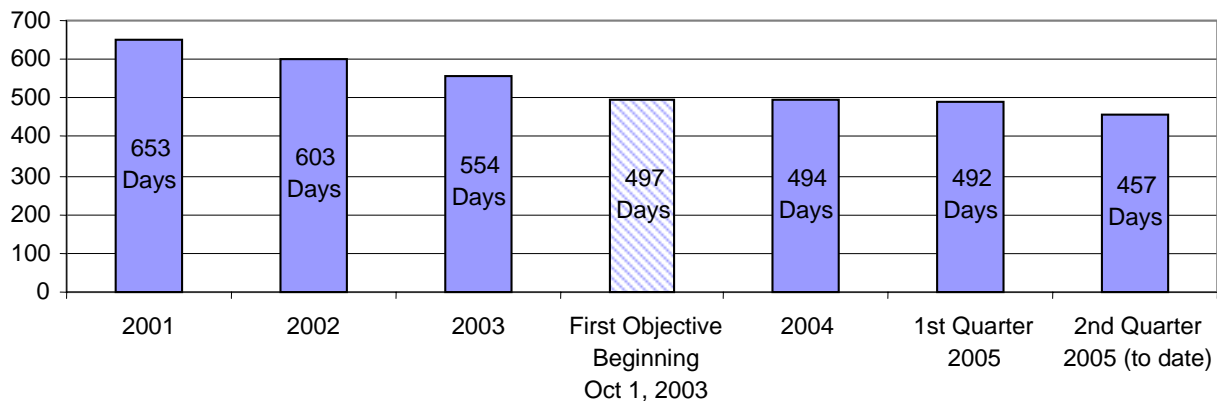
1. Overall

As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In 2002 this time was 603 days in 2003 it was 554 days and in 2004 it was 494 days. In the first quarter of 2005 this time was 492 days, and in the second quarter of 2005 to date this time was 457 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 1 shows, the Court has exceeded its first objective.

Chart 1
Processing Time For Opinion Cases

	2001	2002	2003	2004	First Quarter 2005	Second Quarter 2005 (to date)
Intake	260	240	235	228	225	210
Warehouse	271	261	225	167	166	150
Research	61	62	64	68	68	71
Judicial Chambers	61	40	30	31	33	26
Totals	653	603	554	494	492	457

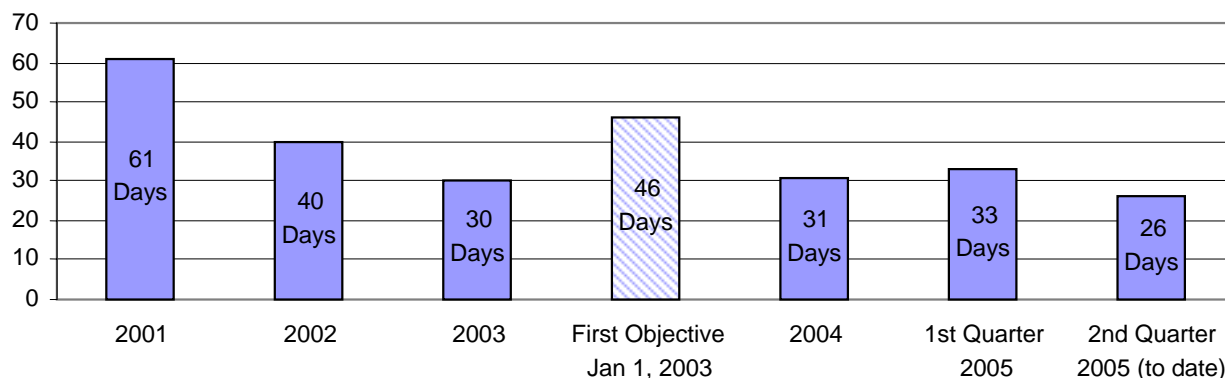
Graph 1
Overall Time In Processing Compared To First Objective



2. Judicial Chambers

Graph 2 shows that in 2001 for those cases disposed of by opinion the average time spent in the Judicial Chambers was 61 days. In 2002 this time was 40 days, in 2003 it was 30 days, and in 2004 it was 31 days. In the first quarter of 2005, this time was 33 days and in the second quarter of 2005 to date this time was 26 days. As Graph 2 shows, the Court has exceeded its first objective.

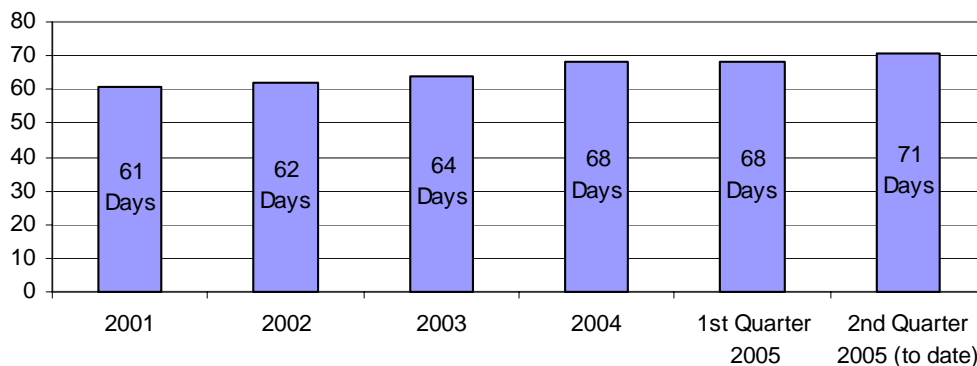
Graph 2
Processing Time In Judicial Chambers Compared To First Objective



3. Research

As Graph 3 shows, in 2001 for those cases disposed of by opinion the average time spent in the Research Division was 61 days. In 2002 this time was 62 days, in 2003 it was 64 days, and in 2004 it was 68 days. In the first quarter of 2005, this time was also 68 days and in the second quarter of 2005 to date this time was 71 days. Graph 3 shows these times on a comparative basis.

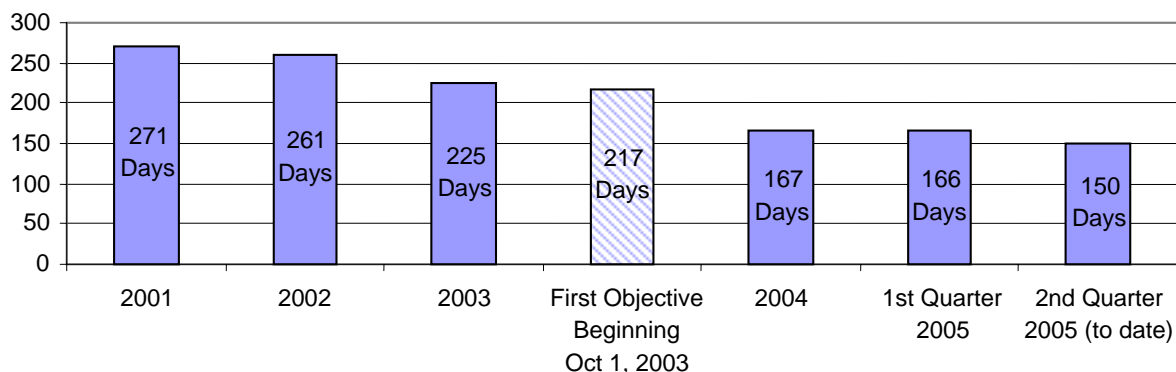
Graph 3
Processing Time In Research



4. Warehouse

Graph 4 shows that in 2001 for those cases disposed of by opinion the average time spent in the Warehouse was 271 days. In 2002 this time was 261 days, in 2003 it was 225 days, and in 2004 it was 167 days. In the first quarter of 2005, this time was 166 days and in the second quarter of 2005 to date this time was 150 days. Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 4 shows, the Court has exceeded its first objective.

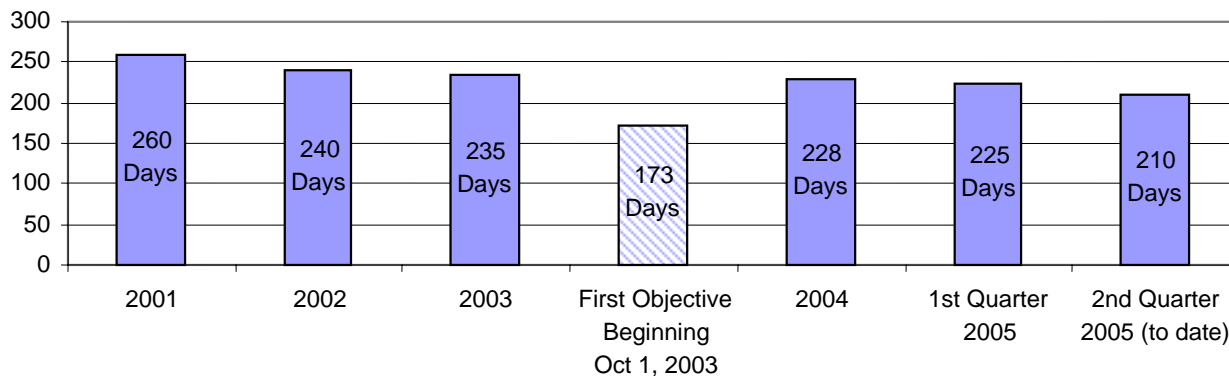
Graph 4
Processing Time In The Warehouse Compared To First Objective



5. Intake

Graph 5 shows that in 2001 for those cases disposed of by opinion the average time spent in Intake was 260 days. In 2002 this time was 240 days, in 2003 it was 235 days, and in 2004 it was 228 days. In the first quarter of 2005, this time was 225 days and in the second quarter of 2005 to date this time was 210 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 5 shows, the Court has not yet met its objective.

Graph 5
Processing Time In Intake Compared To First Objective



B. Case Differentiation

Chart 2 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2001, arrayed according to major types of case call configurations.

Chart 2
2001

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	260	271	229	280	192	187
Warehouse	271	290	214	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	61	72	27	66	43	30
Total	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2002, arrayed according to major types of case call configurations.

Chart 3
2002

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	240	254	205	255	178	178
Warehouse	261	290	189	312	58	56
Research	62	59	69	61	66	67
Judicial Chambers	40	49	19	44	26	20
Total	603	652	482	672	328	321

Chart 4 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2003, arrayed according to major types of case call configurations.

Chart 4
2003

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	235	244	212	251	166	167
Warehouse	225	253	154	271	28	27
Research	64	63	64	63	66	67
Judicial Chambers	30	36	16	33	18	14
Total	554	596	446	618	278	275

Chart 5 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2004, arrayed according to major types of case call configurations.

Chart 5
2004

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	228	241	201	249	134	131
Warehouse	167	175	150	198	29	28
Research	68	73	59	71	55	55
Judicial Chambers	31	34	25	33	22	21
Total	494	523	435	551	240	235

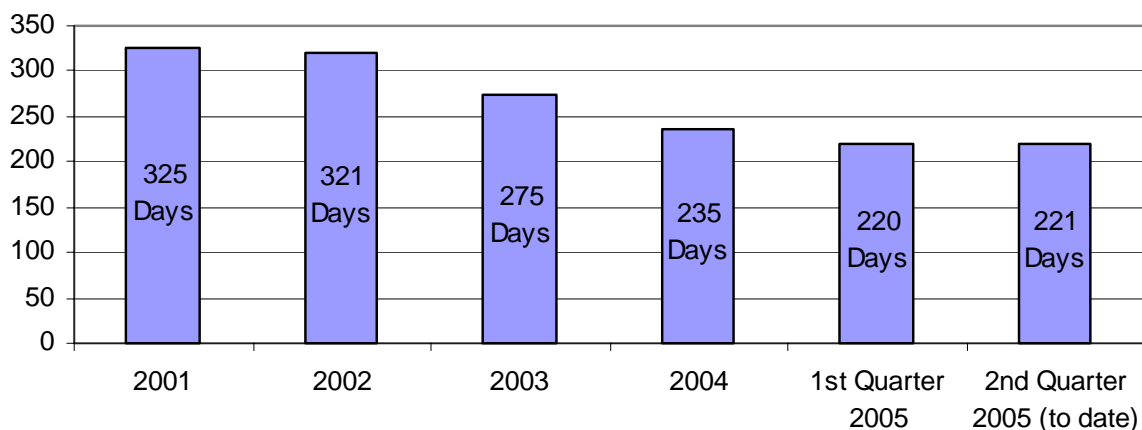
Chart 6 shows the overall situation for cases that the Court disposed of by opinion for the first two quarters of 2005 to date, arrayed according to major types of case call configurations.

Chart 6
First Two Quarters of 2005 To Date

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	220	239	181	238	126	125
Warehouse	159	153	170	185	27	21
Research	69	81	46	72	55	54
Judicial Chambers	30	32	27	31	26	21
Total	478	505	424	526	234	221

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001 it took 325 days, on average, to dispose of such cases by opinion. As Chart 6, above, shows, the Court reduced this time to 221 days in the first two quarters of 2005 to date. Of that time, 125 days were spent in the Intake stage. The combined time for all other stages was 96 days, including only 21 days in the Judicial Chambers. Graph 6 shows the situation with respect to dependency appeals beginning in 2001 through the first two quarters of 2005 to date.

Graph 6
Dependency Appeals



C. Case Age

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court's overall goal is to decide 95% of its cases within 18 months of filing (see table, below). While the Court is gratified at the increasing percentage of cases in its inventory that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all its cases within 18 months of filing.

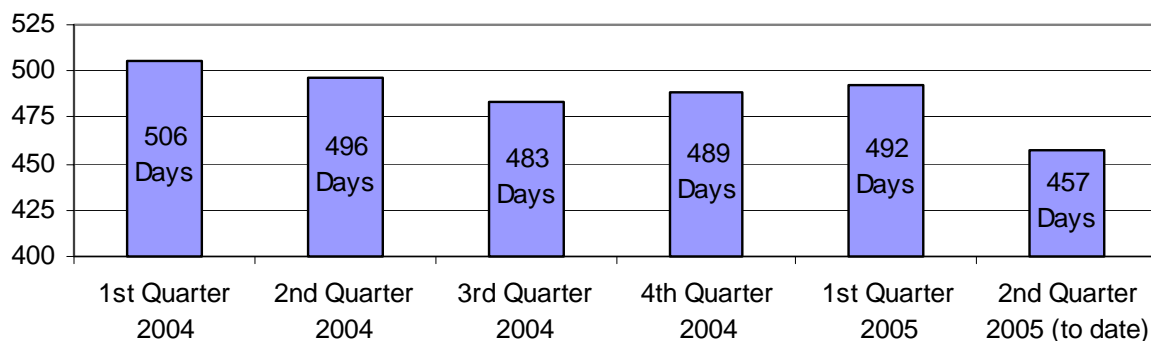
Percentage of Cases 18 Months Old Or Less At Disposition

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	1 st Quarter <u>2005</u>	2 nd Quarter 2005 <u>(to date)</u>
Opinion Cases	25.03%	33.31%	46.59%	67.01%	72.72%	72.21%
Order Cases	x ¹	97.36%	97.70%	98.30%	99.08%	99.05%
All Cases	y ¹	66.92%	74.43%	83.85%	87.30%	87.35%

D. Progress In The Second Quarter Of 2005 To Date

The Court's delay reduction effort made remarkable progress during the second quarter of 2005 to date as Graph 7 shows.

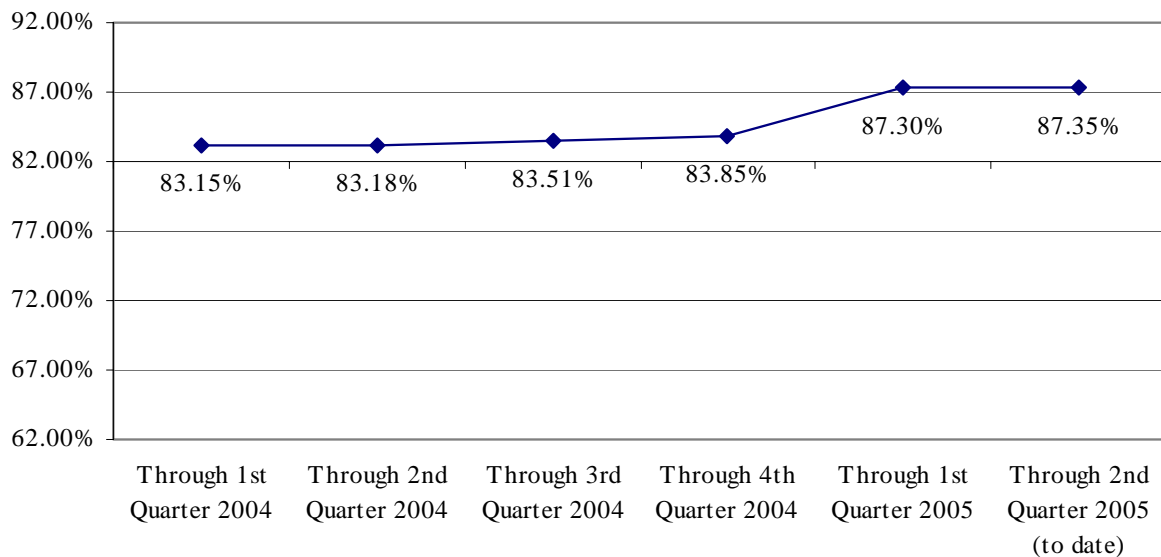
Graph 7
Overall Time In Processing
Quarter-to-Quarter Comparison



Looked at another way, the Court continued to make progress toward meeting its goal of deciding 95% of all of its cases within 18 months of filing as Graph 8 shows:

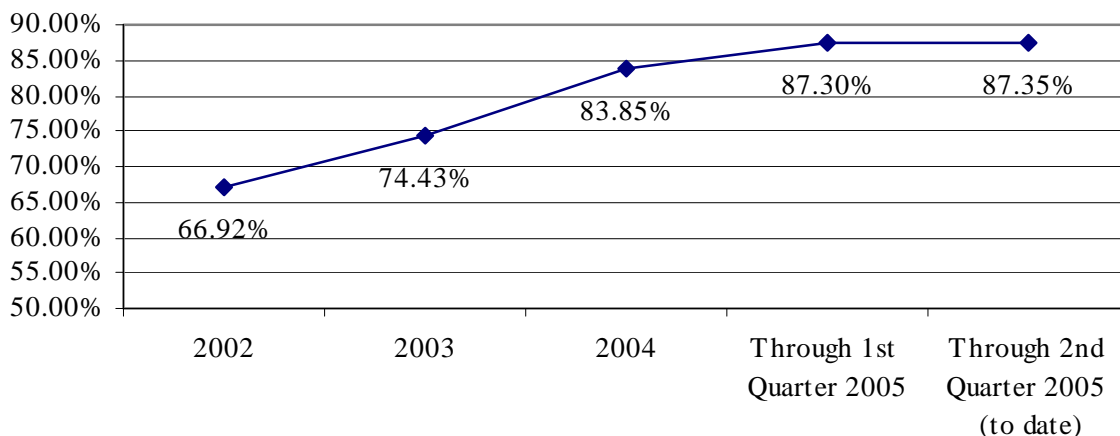
¹ These data are not readily available from the Court's database.

Graph 8
Percentage Of Cases 18 Months Old Or Less At Disposition
Quarter-to-Quarter Comparison



This level of disposition is significant in comparison to the disposition levels in prior years, as Graph 9 shows:

Graph 9
Percentage Of Cases 18 Months Old Or Less At Disposition



It is very clear, however, that the Court must continue to increase the percentage of dispositions in 18 months or less at roughly the same rate in order to reach its goal of deciding 95% of its cases within 18 months of filing by the end of 2005. This will be a significant challenge for the Court as a whole.

IV. NEXT STEPS

A. Maintaining the Staff in the Research Division

The Court recognized in March of 2002 that, given existing budget constraints, it could not realistically expect to add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court recognized that it had to further accelerate the disposition of cases decided by opinion. In the presentation of its budget request for FY 2004, the Court emphasized that, to meet this goal, it needed to add attorneys to its Research Division to drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds allowed the Court to increase its Research Division staff in FY 2004 and to continue the higher staffing levels in FY 2005.

This remarkable progress now stands in jeopardy. As is well known, the State of Michigan has faced daunting challenges with respect to its budget situation over the last few fiscal years. Although the budget for the Judiciary is relatively small compared to the overall state budget—while the Executive branch and the Legislature routinely deal with billions of dollars, the Court of Appeals' expenditures for FY 2004 were \$17,100,800—the Court has been part of the solution to these challenges. Indeed, the Court's operational expenditures have increased from FY 1999 to FY 2004 by only 2.08% while the rate of inflation has increased by 14.89%.

During that same time period the Court's expenditures per disposition—in industrial terms, its cost per unit produced—have actually declined when measured in 1999 dollars and its dispositions per full time equivalent (including Judges)—again in industrial terms, its productivity per worker—have increased. While the Court's overall impact on the state budget is small, adjustments to its budget are of great importance as they have a very direct impact on the Court's operations and its continued ability to increase productivity and reduce delay.

Against this background, it is certainly not an exaggeration to state that the FY 2006 budget request for the Judiciary that Chief Justice Taylor submitted to the Legislature in March was a lean one. Again focusing on the Court of Appeals, the gross appropriation that Chief Justice Taylor requested was \$19,047,700. This was essentially a “standstill” budget; indeed, it fell somewhat short of covering the Court's projected increases in insurance, retirement, and other costs.

However, the gross appropriation for FY 2006 contained in the House Omnibus Appropriation bill was \$18,537,100 while the gross appropriation contained in the Senate Bill was \$18,225,100. Thus, the Court of Appeals faces reductions in Chief Justice Taylor's budget request for FY 2006 of \$510,600 if the House version of the FY 2006 budget is adopted and \$822,600 if the Senate version is adopted.

B. Reducing the Time in Intake

The Court must also address the problem of the delay in Intake. As noted above, in 2001 an opinion case spent 260 days on average in Intake. In 2002 that time was 240 days on average, in 2003 it was 235 days on average, in 2004 it was 228 days on average, in the first quarter of 2005 it was 225 days on average, and in the second quarter of 2005 to date it was 210 days on average. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on or after October 1, 2003. The Court expected to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court. Pending a decision on those changes, a Case Management Work Group comprised of members from the Supreme Court, the Court of Appeals, and the Bar developed a plan for the management of appeals from summary disposition orders. That plan will cut an estimated 70 days from the average time it takes to process all opinion cases in its first year of operation. On October 5, 2004, the Supreme Court approved the plan in Administrative Order No. 2004-5. Pursuant to the administrative order, the Court of Appeals began implementation of the plan on January 1, 2005.

V. CONCLUSIONS

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all its appeals within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that will reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. In the second quarter of 2005 to date:

- The Court reduced the average overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 457 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case spends in the Judicial Chambers from the 2001 level of 61 days to 26 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 46 days in the Judicial Chambers. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case waits in the Warehouse from the 2001 level of 271 days to 150 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has exceeded its first objective.
- The average time a case spends in Intake has been reduced from the 2001 level of 260 days to 210 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on or after October 1, 2003. Thus, the Court will need to reduce the time a case spends in Intake by another 37 days to meet its objective.
- The Court has reduced the average overall time it takes to process dependency appeals from the 2001 level of 325 days to 221 days. The recently adopted rule changes (and the ultimate adoption of the remaining proposal for changing MCR 7.210 as to the time for filing the record with the Court) will further reduce the time on appeal of TPR cases to a projected average of 167 days.

Chart 7 summarizes the Court's progress toward meeting its first objective.

Chart 7
October 2003 Objective

	2001	2002	2003	2004	2 nd Quarter 2005 to date	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
Intake	260	240	235	228	210	50	173	37
Warehouse	271	261	225	167	150	121	217	(67)
Research	61	62	64	68	71	(10)	61	10
Judicial Chambers	61	40	30	31	26	35	46	(20)
Total	653	603	554	494	457	196	497	(40)

Chart 8 summarizes the additional progress that will be needed to meet the Court's second objective of reducing average the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days commencing fully in September of 2004.

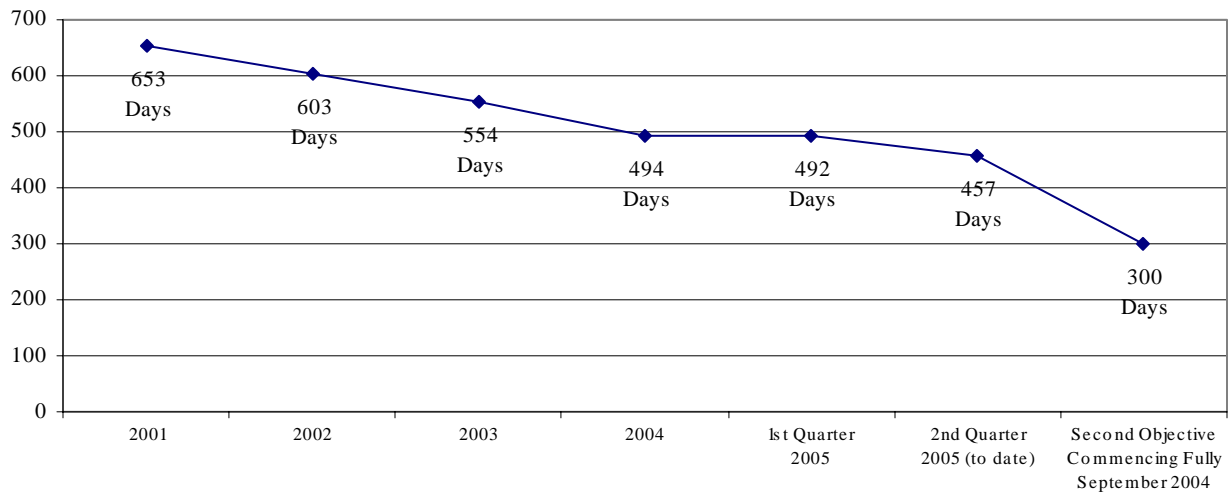
Chart 8
September 2004 Objective

	2001	2002	2003	2004	2 nd Quarter 2005 To Date	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
Intake	260	240	235	228	210	50	173	37
Warehouse	271	261	225	167	150	121	0	150
Research	61	62	64	68	71	(10)	61	10
Judicial Chambers	61	40	30	31	26	35	46	(20)
Total	653	603	554	494	457	196	280	177

Graph 10 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002, 2003, 2004, the first quarter of 2005, the

second quarter of 2005 to date, and the second objective that was intended to commence fully in September of 2004.

Graph 10
Progress Toward Objectives



2005 will be a critical year for delay reduction at the Court of Appeals. The Court's overall goal is to decide 95% of its cases within 18 months of filing. The Court estimates that its differentiated case management plan for appeals from the grant or denial of a summary disposition motion will cut the overall processing time for all opinion cases by 70 days on average in 2005. The Court's overall processing time for an opinion case was 457 days on average in the second quarter of 2005 to date. Therefore, if the differentiated case management plan is successful in 2005, the average processing time for opinion cases will be 387 days, all other things being equal. The Court therefore must substantially reduce the wait in the Warehouse in the next two quarters of 2005.

However, reductions in the Court's proposed FY 2006 budget will severely compromise, if not totally stymie, the Court of Appeals' delay reduction effort. Approximately 90% of the Court's costs relate to personnel. These reductions, if implemented in their current form, will mean that the Court will be unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion . . . and these are the very staffing levels that the Legislature and the Executive Branch previously allowed the Court to increase, through increases in its statutorily-set fees, in order to meet its delay reduction goal.

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The Judges of the Court of Appeals have made themselves publicly accountable for the achievement of the Court's delay reduction goal. The Supreme Court, the Department of Management and Budget, the Governor, and the Legislature have all recognized how important that goal is. To lose the momentum generated by three and a half years of careful planning and hard work would be more than a setback, it would be tantamount to a defeat for every person who has contributed to our delay reduction effort.